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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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November 26, 2014

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0272
L.A.S.D. File #014-05481-0250-013

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 25, 2014, fatal shooting of Salvador Palencia-Cruz by Los Angeles County Sheriff's Department (LASD) Deputies Andrew Alatorre and [redacted] It is our conclusion that Deputies Alatorre and [redacted] acted in lawful self-defense and defense of others at the time each fired his weapon.

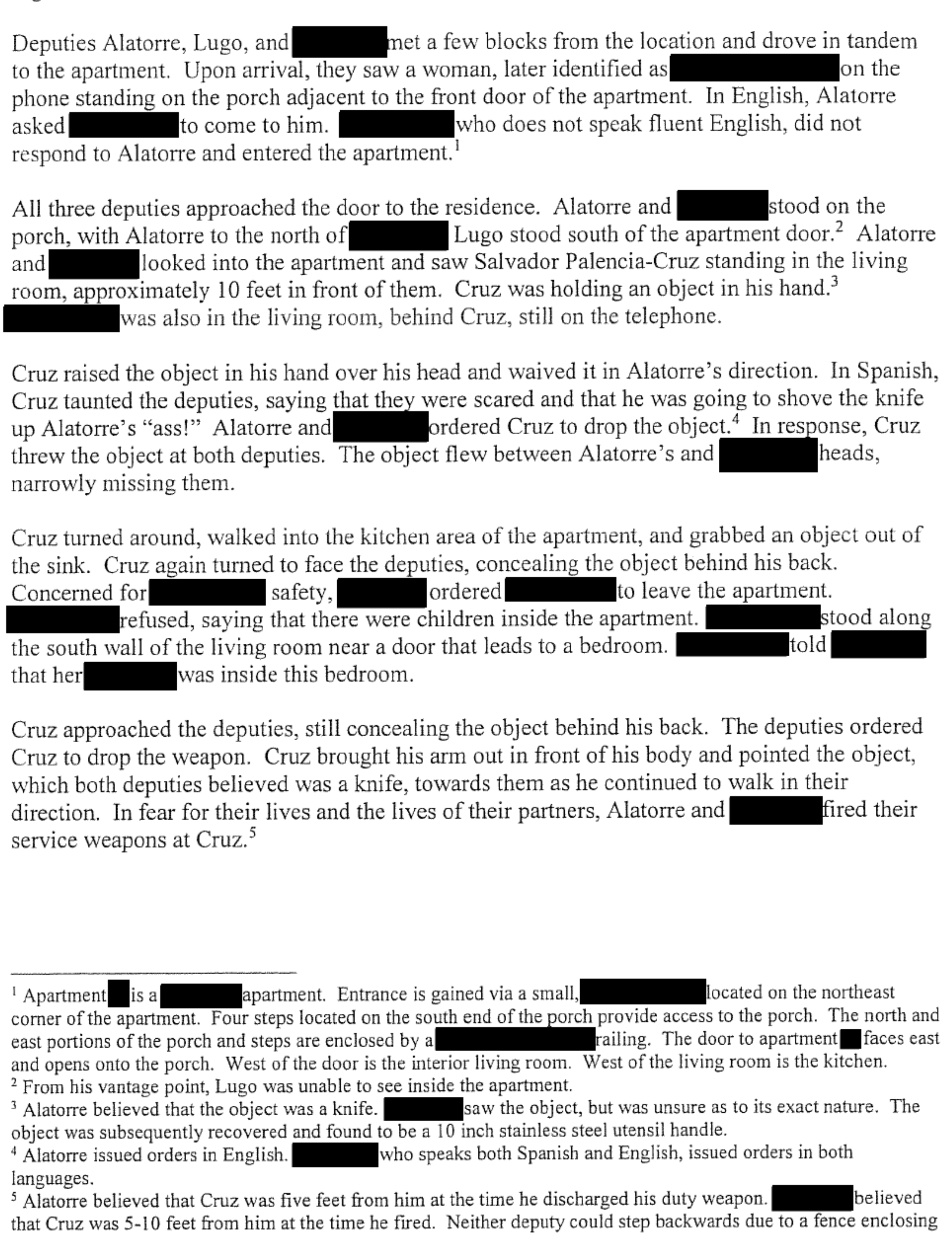
The District Attorney's Command Center was notified of this shooting on April 26, 2014, at approximately 12:25 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Amy Pellman Pentz and District Attorney Senior Investigators Armando Alvarado and Richard McIntosh, responded and was given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department Lieutenant Steve Jauch.

The following analysis is based on reports, audio recordings, and photographs submitted to this office by the LASD – Homicide Bureau. No departmentally compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On April 25, 2014, at approximately 11:00 p.m., Deputies Andrew Alatorre and Michael Lugo were working in uniform as partners in a marked black and white police vehicle. Deputy [redacted] was working in uniform as a single man unit driving a marked black and white police vehicle. Both units responded to a radio call of an attempted suicide at [redacted] 56th Street apartment [redacted] in Maywood. The call indicated that the person attempting suicide was armed with a knife.

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Deputies Alatorre, Lugo, and [redacted] met a few blocks from the location and drove in tandem to the apartment. Upon arrival, they saw a woman, later identified as [redacted] on the phone standing on the porch adjacent to the front door of the apartment. In English, Alatorre asked [redacted] to come to him. [redacted] who does not speak fluent English, did not respond to Alatorre and entered the apartment.[1]

All three deputies approached the door to the residence. Alatorre and [redacted] stood on the porch, with Alatorre to the north of [redacted] Lugo stood south of the apartment door.[2] Alatorre and [redacted] looked into the apartment and saw Salvador Palencia-Cruz standing in the living room, approximately 10 feet in front of them. Cruz was holding an object in his hand.[3] [redacted] was also in the living room, behind Cruz, still on the telephone.

Cruz raised the object in his hand over his head and waived it in Alatorre's direction. In Spanish, Cruz taunted the deputies, saying that they were scared and that he was going to shove the knife up Alatorre's "ass!" Alatorre and [redacted] ordered Cruz to drop the object.[4] In response, Cruz threw the object at both deputies. The object flew between Alatorre's and [redacted] heads, narrowly missing them.

Cruz turned around, walked into the kitchen area of the apartment, and grabbed an object out of the sink. Cruz again turned to face the deputies, concealing the object behind his back. Concerned for [redacted] safety, [redacted] ordered [redacted] to leave the apartment. [redacted] refused, saying that there were children inside the apartment. [redacted] stood along the south wall of the living room near a door that leads to a bedroom. [redacted] told [redacted] that her [redacted] was inside this bedroom.

Cruz approached the deputies, still concealing the object behind his back. The deputies ordered Cruz to drop the weapon. Cruz brought his arm out in front of his body and pointed the object, which both deputies believed was a knife, towards them as he continued to walk in their direction. In fear for their lives and the lives of their partners, Alatorre and [redacted] fired their service weapons at Cruz.[5]

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[1] Apartment [redacted] is a [redacted] apartment. Entrance is gained via a small, [redacted] located on the northeast corner of the apartment. Four steps located on the south end of the porch provide access to the porch. The north and east portions of the porch and steps are enclosed by a [redacted] railing. The door to apartment [redacted] faces east and opens onto the porch. West of the door is the interior living room. West of the living room is the kitchen.

[2] From his vantage point, Lugo was unable to see inside the apartment.

[3] Alatorre believed that the object was a knife. [redacted] saw the object, but was unsure as to its exact nature. The object was subsequently recovered and found to be a 10 inch stainless steel utensil handle.

[4] Alatorre issued orders in English. [redacted] who speaks both Spanish and English, issued orders in both languages.

[5] Alatorre believed that Cruz was five feet from him at the time he discharged his duty weapon. [redacted] believed that Cruz was 5-10 feet from him at the time he fired. Neither deputy could step backwards due to a fence enclosing a portion of the porch.

Cruz released the object and fell onto his back in the living room. [redacted] immediately broadcast that a shooting had occurred and requested medical assistance for Cruz. Paramedics arrived, but were unable to resuscitate Cruz. Cruz was pronounced dead at the scene. The object that Cruz was holding was recovered near his body. The object was a stainless steel cake spatula with a black handle.[6]

Deputy Alatorre was armed with a Beretta 92F 9mm semiautomatic handgun. The maximum capacity of this firearm is 18 rounds. When examined after this incident, Alatorre's duty weapon contained 15 rounds. Deputy [redacted] was armed with a Beretta 92FS 9mm semiautomatic handgun. The maximum capacity of this firearm is 16 rounds. When examined after this incident, [redacted] duty weapon contained 12 rounds. Seven 9mm cartridge casings were recovered from the scene. Alatorre fired three rounds and [redacted] fired four rounds.

On April 27 and 28, 2014, Deputy Medical Examiner Ogbonna Chinwah, M.D., performed an autopsy on Cruz. Cruz sustained a total of nine gunshot wounds: four wounds to the chest, two wounds to the abdomen, one wound to the right hip, one wound to the right thigh, and one wound to the left hand.[7] Six projectiles were recovered during the autopsy. There was no soot or stippling present in any of the wounds. Dr. Chinwah ascribed the cause of death as multiple gunshot wounds. A toxicology analysis revealed that Cruz' blood alcohol level was between .38 - .44 percent.

[redacted] Cruz' [redacted] was interviewed in the early morning hours the following day. [redacted] told investigators that she and Cruz ended their [redacted] two weeks prior. On the date of the incident, Cruz came to her home at approximately 7:00 p.m. to retrieve some personal belongings. [redacted] her [redacted] and her [redacted] were home at the time.[8]

Cruz drank approximately three-quarters of a bottle of wine while at the apartment and [redacted] believed that he was drunk. [redacted] told Cruz that he had to leave by 9:30 p.m. Cruz became angry, began to yell at [redacted] and inquired if she was with another man. Cruz retrieved a knife from the kitchen and told [redacted] that he was going to kill himself. [redacted] pleaded for him to stop and asked for the knife. Cruz gave her the knife and [redacted] stuck the knife in a plant on the porch.

Cruz retrieved a second knife from the kitchen and placed the knife on the ground with the blade perpendicular to the ground. Cruz got to his knees and laid on the knife with the blade touching his torso. [redacted] begged Cruz not to behave in this manner while the [redacted] were present.

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[6] Sergeant Richard Boroquez arrived on scene just after the deputies discharged their firearms. Boroquez saw the cake spatula on the ground and also believed that the object was a knife.

[7] Dr. Chinwah was unable to conclusively determine why seven projectiles caused nine wounds. The gunshot wound to the left hand was a through and through wound. The projectile from this wound likely reentered Cruz' body and caused a second wound. One of the two wounds to Cruz' abdomen was superficial and Dr. Chinwah believed that it could have been caused by a bullet fragment.

[8] [redacted] was asleep during this incident and did not witness these events.

Cruz told [redacted] that he was going to do it "like a movie." Believing that Cruz was going to kill himself, [redacted] called the police. While on the phone with the police, [redacted] pushed Cruz and was able to gain possession of the second knife. [redacted] placed this knife adjacent to the other knife in the planter on the porch.[9]

Cruz grabbed a metal spatula and held it behind his back. The deputies arrived at the apartment and yelled something in English to Cruz. Cruz yelled in Spanish, "What I have behind my back I will stick up your ass!" The deputies ordered [redacted] to move out of the way. [redacted] refused to leave, grabbed the metal spatula from Cruz, and threw it down to the ground.[10]

Cruz walked to the kitchen and grabbed a long, chrome cake spatula. Cruz held the spatula in his right hand behind his back and stood in the living room. The deputies continued to yell at Cruz, and Cruz continued to yell at the deputies. Cruz pulled the spatula out from behind his back and waved it at the deputies. The deputies immediately fired at Cruz. [redacted] believed that Cruz was approximately eight feet from the deputies at the time they fired their weapons.

[redacted] and Cruz' nine year old [redacted] was interviewed. [redacted] recalled her [redacted] arguing that night, but did not recall the subject of the argument. At some point, her [redacted] told her to go into the downstairs bedroom. [redacted] entered the bedroom, closed the door, and listened to her parents argue. [redacted] heard her [redacted] call the police and tell them that her [redacted] had a knife in his hand.

[redacted] heard additional voices coming from the living room and assumed it was the deputies responding to her [redacted] call. [redacted] heard her [redacted] yell at the deputies, but did not understand what he said. Moments later, [redacted] heard gunshots coming from the living room area. Her [redacted] came into the room and took her to a police car outside.

CONCLUSION

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 U.S. 386, 396-397.

[9] Investigators recovered two kitchen knives from a planter on the porch.
[10] A metal spatula was recovered from inside the living room.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

The evidence examined in this investigation shows that Deputies Alatorre, Lugo, and [redacted] responded to a call of a suicidal man armed with a knife. Upon arrival, they saw Cruz inside the apartment holding an object in his hand. Cruz saw the deputies, taunted them, and threatened to put a knife up Alatorre's "ass." Alatorre and [redacted] ordered Cruz to drop the object. In response, Cruz threw the object at the deputies, narrowly missing them.

Cruz walked into the kitchen, picked up a cake spatula, concealed it behind his back, and approached Alatorre and [redacted] The deputies ordered Cruz to drop the object. Cruz extended his arm in front of his body, still holding the object. Alatorre and [redacted] saw the object in Cruz' hand. Due to the nature of the call, the threat to shove a knife up Alatorre's "ass", the visual similarity between a knife and a cake spatula, and the manner in which Cruz held the object, both deputies reasonably believed that the cake spatula was a knife. Cruz walked towards Alatorre and [redacted] until only 5-10 feet separated them. In fear for their lives and the lives of their partner deputies, Alatorre and [redacted] discharged their service weapons.

We conclude that Deputies Andrew Alatorre and [redacted] were placed in reasonable fear of death or great bodily injury by Cruz' actions and acted lawfully in self-defense and defense of others when they used deadly force. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By *Amy Pentz*

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c: Deputy Andrew Alatorre #[redacted]
Deputy [redacted] #[redacted]